IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 2187 of 2004

Between:

S.Trimurthy Rao, S/o Late Yati Rajulu,D.No.49-39-8,

NGGOS Colony, Akkayapalem, Visakhapatnam - 530 016.

..... PETITIONER

AND

The Commissioner, Municipal Corporation, Visakhapatnam.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order more or direction more particularly in the nature of Writ of Mandamus declaring the proceedings U.C.No.2/2004 dated 29-1-2004 issued by the respondent No.1 as illegal, arbitrary, void and against to the principles of natural justice.

Counsel for the Petitioner : Ms.PADMALATHA YADAV

Counsel for the Respondent : MR.T.S.VENKATARAMANA, SC

The Court made the following :

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O R D E R :

Though interlocutory matter is listed, with the consent of the parties, the matter is finally heard and disposed of.

The petitioner is the owner of property in Survey Nos.2 to 29 (approved layout) in Ward No.30, Block No.22 of Visakhapatnam Municipal Corporation. The petitioner obtained construction permit being Permit No.12321/2002, dated 9-9-2003. When the petitioner was proceeding with the construction, respondent issued a notice under sub-section (1) of Section 452 of Hyderabad Municipal Corporation Act,1955 (for brevity 'the HMC Act') read with Section 7 of Visakhapatnam Municipal Corporation Act,1979 calling upon the petitioner to show cause as to why the unauthorized construction made by the petitioner in contravention of the building permit should not be removed. The impugned notice also pointed out that the petitioner has not left the required set backs, that he has constructed the Balcony in contravention of the plan, that he has violated the F.S.I. Regulation and that when sanctioned plan permitted to construct the building upto the height of 9 meters, the petitioner made construction upto
12 meters. The petitioner submitted his explanation on 2-2-2004, which was received by the Corporation on 4-2-2004. Without considering the same, it is alleged the officials of the Visakhapatnam Municipal Corporation came to the site on
4-2-2004 and threatened to demolish the structures, which are allegedly made in contravention of the building plan. Therefore, the present writ petition is filed.

This Court while admitting the writ petition passed interim orders in W.P.M.P.No.2878 of 2004, dated 6-2-2004 staying the demolition pursuant to the impugned notice dated 29-1-2004. Today, the W.P.M.P. is again listed for further orders in the matter. The learned standing counsel for respondent-Corporation brought to my notice that the impugned notice is one under Section 452 (1) of the

HMC Act, and therefore, the writ petition would not lie.

A perusal of the impugned notice would show that while pointing out the alleged contraventions in constructing the building, the petitioner was asked to show cause, which only means the petitioner was entitled to file explanation. Admittedly, petitioner submitted his explanation on 2-2-2004, and therefore, unless and until the same is considered and appropriate orders are passed under Section 452 (2) of the HMC Act, the respondent cannot take any action. The respondent, is therefore, directed to consider the explanation submitted by the petitioner on 2-2-2004 and pass appropriate orders in the matter. Till then the respondent shall not take any coercive steps.

The writ petition, with the above observations, is disposed of. No costs.

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(V.V.S. RAO, J.)

09-09-2004.

Msr.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner, Municipal Corporation, Visakhapatnam.

2. 2CD copies

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.2187 of 2004

09-09-2004.

(Msr)